

# State of Colorado



**Bill Owens**  
*Governor*

**John Zakhem**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
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Denver, Colorado 80202-3604  
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## **AGENDA PUBLIC BOARD MEETING July 18, 2006**

A public meeting of the State Personnel Board will be held on **Tuesday, July 18, 2006, at the Colorado State Personnel Board, 633 17<sup>th</sup> Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by July 13, 2006.

### **ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2006 – 2007**

#### **I. REQUESTS FOR RESIDENCY WAIVERS**

- A. July 1, 2006 Report on Residency Waivers

Reports are informational only; no action is required.

#### **II. PENDING MATTERS**

- A. Cases on Remand

1. Jeanette E. Aragon v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2003B223, Court of Appeals No. 04CA2521.

This case arose from an appeal of a disciplinary action, which Complainant filed on June 13, 2003. On December 18, 2003, the ALJ dismissed the appeal as moot because DOC rescinded its disciplinary action. The scheduled date for the evidentiary hearing was vacated, the parties briefed the issue of attorney fees and costs, and on May 6, 2004, the ALJ denied requests from both parties for attorney fees.

Following an appeal by Complainant, on October 19, 2004, the Board adopted the Order Denying Motions for Attorney Fees and Costs, Vacating June 1, 2004 Hearing and Dismissing Appeal.

On December 3, 2004, a Notice of Appeal was filed with the Court of Appeals. On May 4, 2006, the Colorado Court of Appeals issued its "Order Affirmed in Part, Reversed in Part, and Case Remanded with Directions," finding that

Complainant should have been afforded a hearing on the attorney fee issue and thus reversed the Board's order denying her a hearing on her request for attorney fees. The Court affirmed the Board's order to the extent that the Board did not enter judgment against Respondent and remanded the case to allow Complainant a hearing on her claim for attorney fees and costs.

On July 3, 2006, the Mandate of the Court of Appeals was issued.

**B. Petitions for Declaratory Order**

1. Petition for Declaratory Order of the Colorado Federation of Public Employees (CFPE) v. Department of Personnel and Administration, State Personnel Board case number 2006D003.

On February 8, 2006, CFPE filed a petition for declaratory order asking that the State Personnel Board act immediately to provide an interpretation of the law and guidance in the following areas, which CFPE asserts are within the Board's full jurisdiction and which were previously covered by the Director's Procedures: Director's Procedure 4-24 - Referrals for Multiple Vacancies, Director's Procedures 4-31 - Temporaries, and Procedures 10-3(F) and 10-5 - Personal Services Contracts.

On April 4, 2006, CFPE filed a Supplement to its Petition for Declaratory Order, reiterating its request that the Board provide interpretive guidance on DPA procedures 4-24 and 4-31.

**III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

There are no Initial Decisions or other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

**IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Kimberly E. Temple v. Department of Revenue, Division of Gaming, State Personnel Board case number 2006G059.

Complainant was a probationary employee who was terminated from employment by the Department of Revenue, Division of Gaming. She asks for Board review of her claims of hostile work environment and defamation of character.

Respondent argues that Complainant has failed to establish a *prima facie* case for discrimination, that Complainant's allegations regarding discrimination are unsupported, and that Complainant was terminated for performance issues.

The Administrative Law Judge issued a Preliminary Recommendation on July 5, 2006, recommending Complainant's petition be denied.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Frank Irions v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2004B024 (June 12, 2006).

Complainant appealed his demotion from the rank of major, seeking reinstatement to his position, back pay or other expenses associated with the demotion, and reasonable attorney fees and costs. After hearing, the ALJ determined that Complainant committed many, although not all, of the acts for which he was disciplined, including inappropriately managing the performance evaluation process for those he supervised, failing to properly manage the an American Correctional Association audit, neglecting to solve the kitchen cleaning problem, and participating in an inappropriate relationship with a supervisee. In addition, the ALJ concluded that Respondent's action was not arbitrary, capricious, or contrary to rule or law, with the exception of Respondent's conclusion that Complainant had violated Administrative Regulation 1450-5 in the manner in which Complainant handled supervision of Captain John Tafoya. Finding that the discipline imposed was within the range of reasonable alternatives and that attorney fees are not warranted, the ALJ affirmed Respondent's action in part and rescinded it in part, ordering that Respondent remove all references of a violation of AR 1450-5 in relation to Complainant's interaction with Captain Tafoya from the disciplinary letter in this matter.

- B. Dorothy Emerson v. Department of Human Services, State Personnel Board case number 2005B097 (June 29, 2006).

Complainant, a licensed practical nurse, appealed her disciplinary reduction in pay in the amount of 5% for 30 days, seeking reinstatement of the pay deducted from her paycheck. After hearing, the ALJ determined that although Complainant committed one of the acts for which she was disciplined, Respondent's action was arbitrary, capricious, or contrary to rule or law, and the discipline was not within the range of reasonable alternatives. The ALJ found that there was no evidence in the record that the appointing authority considered Complainant's lack of corrective or disciplinary actions in the past or her previous performance evaluations; that the appointing authority gave candid and honest consideration to the mitigating information Complainant provided in her February 5 letter; or that the appointing authority confirmed the facts upon which she based the discipline (falsification of a patient's medical record), prior to making her decision, in violation of the *Lawley* standard. Rescinding the disciplinary pay reduction, the ALJ ordered that Respondent remove the disciplinary action from Complainant's personnel file and reimburse her for the 5% in pay for thirty days that was deducted from her paycheck, allowing the imposition of a corrective action in place of the disciplinary action.

- C. Lynn Redden & William Kaberlein v. Department of Labor and Employment, State Personnel Board case number 2005G094(C) (July 6, 2006).

Complainants appealed the selection process utilized by Respondent for filling multiple vacancies for the Labor and Employment Specialist III (L & E III) position, seeking an order invalidating the promotions (with the exception of the number 3 ranked candidate) and mandating that Respondent conduct the selection process again, in accordance with the Rule of Three as set forth in the Colorado Constitution, article XII, §13(5), and C.R.S. §24-50-112.5(b)(2). After hearing, the ALJ concluded that Respondent violated the Colorado Constitution, article XII, §13(5), and §24-50-112.5(2)(b), C.R.S.; Respondent violated former Director's Procedure P-4-17; and Respondent's action was arbitrary and capricious. Rescinding Respondent's actions, the ALJ ordered that Respondent shall invalidate the promotions of the nine individuals promoted to L & E III who did not rank #3; Respondent shall make the remaining selections to the L & E III positions from the January 2005 referral list based on the three highest ranking for each position; the first selection shall be made from the top three ranked individuals on the referral list (#1, #2, and #4); and for each additional selection, the next highest ranking individual's name (#5) will be referred to the appointing authority, until all selections have been made.

## **VI. REVIEW OF THE MINUTES FROM THE JUNE 20, 2006 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 20, 2006 PUBLIC MEETING:**

- A. Terry J. Miller v. Department of Higher Education, University of Northern Colorado, State Personnel Board case number 2005B112.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision of the ALJ.

- B. Patrick Ward v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2004B143.

The Board voted to remand the matter to the Administrative Law Judge solely for legal analysis regarding the fifth prong of the test for a *prima facie* case of discrimination based on disability, as enunciated in *Community Hospital v. Fail*, 969 P.2d 667 (Colo. 1998), including, if necessary, holding an evidentiary hearing and reopening discovery. The decision is to be issued within thirty days of the signing of this Order and, if appealed to the Board, is to be handled under the Board rules applicable to such appeals.

- C. Nancy Resnick v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2005G021.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- D. Sean McGuire v. Department of Revenue, State Personnel Board case number 2004G080(C).

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Simone Belmonte v. Department of Corrections, Training Academy, State Personnel Board case number 2005G101.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

- A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

- B. OTHER BOARD BUSINESS

- Staff Activities

- C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

### **X. PROPOSED LEGISLATION AND/OR RULEMAKING**

**XI. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the June 20, 2006 Executive Session
- C. Other Business

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**NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>August 15, 2006</b>	<b>Colorado Department of Transportation 202 Centennial Street Glenwood Springs, CO 81601</b>
<b>September 19, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>October 17, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>November 21, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>December 19, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>January 16, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>February 20, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>March 20, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>April 17, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>May 15, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>June 19, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>